IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3597 OF 1988

Smt.Yellawwabai Malkappa Mali,
since deceased by her legal heirs

(2) Smt.Vithabai Nager Koude
@ Kyade

(3) Smt.Sakhubai @ Sakubai Baba Mali,

Nos.2 and 3 residents of
Mandrup, Taluka South Sholapur,
District - Sholapur. ...Petitioners.

Versus

(2) Yesu Sada Dhane,

(3) Smt.Muktabai @ Mugabai
Laxman Pawatal @ Padole

Nos.1 to 3 residents of
Mangalvedha, Dist.Sholapur. ...Respondents

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Mr.P.M.Mengane for Petitioners.

Mr.S.G.Deshmukh for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 12, 2004.

ORAL JUDGMENT :

1. This Petition takes exception to the

Judgment and Order dated 29th October 1987 passed by the Designated Member, Maharashtra Revenue Tribunal Pune in Revision Application No.MRT.-SH-I-12/86 (TNC.B.21/86) Pune.

2. Briefly stated, the land in question is agricultural land bearing Survey Nos.959/3A and 959/5A situated at Mangalwedha, District Sholapur. The Petitioners claim to be the landlords and the Respondents claim to be the tenants in respect of the suit land. The predecessor of the Petitioners Yellavabai Malkappa Mali and Anjubai Mahadu Mali were the owners. They were disabled landladies being widows on the tillers' day i.e. 1st April 1957. Accordingly, the tillers' day stood postponed. The landladies, however, filed application purported to be under Section 29 read with Sections 32G, 33P, 35A of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act'), requesting the Authority to hold that the tenant was holding land in excess of the ceiling area and on that basis, resume the suit land. Suffice it to observe that the Authority has eventually held that the holding of the tenant on

the date of application i.e. 21st June 1971 was in excess of ceiling area as they had already purchased land, which was earlier owned by Smt.Ganpati Maharaj Panchayat. The Authorities have found that the land held by the tenants in addition to the present land was admeasuring 21 acres and 19 gunthas out of Gat No.635 and 641 which was in excess of ceiling area. The finding so reached by the tenancy authority has been affirmed by the Appellate Authority. That finding has not been disturbed. However, the Tribunal, by the impugned Judgment, at the instance of the Respondents, was pleased to set-aside the concurrent view taken by the two authorities and also dismissed the original application preferred by the Petitioners on the sole reasoning that the application as filed, was not maintainable. It has taken the view that as the tillers' day was postponed, the question of purchase having become ineffective does not arise, as the right to purchase would accrue to the tenants/Respondents only on crystallisation of the tillers' day. Accordingly, it proceeded to hold that the application as filed on behalf of the landladies

was premature. This view taken by the Tribunal is subject matter of challenge in the present Writ Petition.

3. Before I proceed to examine the matter further, it will be appropriate to advert to relevant Sections of the Act. Section 32 provides for the date on which the tenants are deemed to have purchased the land being the tillers' day. Right to purchase the land held by the tiller is not absolute, but is restricted by Section 32A of the Act. The same reads thus:

> **"32A. Tenants deemed to have purchased upto ceiling area.--** A tenant shall be deemed to have purchased land under section 32, --
>
> (1) in the case of a tenant who does not hold any land as owner but holds land as tenant in excess of ceiling area upto the ceiling area;
>
> (2) in the case of a tenant who holds land as owner below the ceiling area, such part of the land only as will raise holding to the extent of the ceiling area."

4. In other words, the right to purchase the suit land by the tenant is limited by the provisions of Section 32A of the Act as referred to

above and in a given case, if it is found that holding of the tenant is in excess of ceiling area, namely; in excess of holding provided in Section 5 of the Act, then the tenant to the extent of excess holding, is not entitled to purchase the land and the statutory purchase with regard to such area will have to be assumed to have become ineffective. The other relevant provision that needs to be adverted to, is Section 32G of the Act, which provides that the Tribunal will follow necessary procedure in determination of purchase price for the land, which is deemed to have purchased by the tenant by operation of law under Section 32 of the Act. Section 32P is a provision investing power in the Tribunal to resume and dispose of land which is not or cannot be purchased by the tenant. In other words, lands which cannot be purchased by tenant or in respect of which, purchase has become ineffective, the Tribunal, in exercise of powers under Section 32P is obliged to resume such land and dispose of the same in the manner provided thereunder.

5. The Application as filed by the landladies

in the present case is the one under Section 29 read with Sections 32G, 32P and 35A of the Act. 35A of the Act is a provision requiring the Mamlatdar to determine the quauntum of holding in respect of the land held by the tenant and during such enquiry, if the Mamlatdar finds that the tenant holds land in excess of the ceiling area, then procedure as is stipulated under Section 32P is required to be followed by virtue of Section 35A(2) of the Act.

6. After having referred to the relevant provisions and on conjoint reading of the same, the position that emerges is that the Tribunal is obliged to take action under Section 32P of the Act in respect of land where the purchase has become ineffective or on the finding that the tenant is ineligible to purchase any portion of the land on account of having exceeded the permissible holding in terms of Section 5 of the Act. A priori, such a provision, to my mind, can be and ought to be invoked where, from the facts established on record, it is possible to take the view that the tenant is not eligible to purchase the land, as the

same is being held in excess of the ceiling area provided under Section 5 of the Act. To get over this position, the argument canvassed on behalf of the Respondents is that on account of Section 32F of the Act, the tillers' day stood postponed. This argument clearly overlooks the settled position that Section 32F of the Act is not a provision of disabling the landlord to resume the land. Whereas, it is only a provision entitling or empowering the tenant to purchase the land at a future date. The fact remains that the date on which the subject application was filed, the holding of the tenant has been established to be in excess of ceiling area and that finding has not been disturbed either by the Tribunal nor has been questioned before this Court at the instance of the Respondents. Counsel for the Respondents fairly submits that, that finding reached by the two authorities below cannot be taken exception to, but he has supported the reason recorded by the Tribunal that the application as filed, was premature for the reasons already recorded hereinbefore. However, there is no express provision in the Act, which would disentitle the

Tribunal to invoke remedy under Section 32P of the Act inspite of the finding reached that the tenant was holding land in excess of the ceiling area and was therefore, not eligible to purchase the same by virtue of Section 32A of the Act.

7. Viewed in this perspective, the decision of the Tribunal cannot be sustained and the same will have to be set-aside. As mentioned earlier, the Tribunal has not overturned the finding reached by the two authorities below that the land held by the tenant is in excess of the ceiling area. On that finding of fact, the application filed on behalf of the Petitioners will have to be allowed and the Tenancy Authority will have to take consequential steps under Section 32P of the Act in respect of the suit lands held by the Respondents.

8. Petition allowed on the above terms. No order as to costs.

A.M.KHANWILKAR, J.